

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SERGEY KOTSYUBA

236 Anvil Lane

Feasterville Trevose, PA 19053-7835

Plaintiff

vs.

DISCOVER FINANCIAL SERVICES
c/o CT Corporation System
1515 Market Street
Philadelphia, PA 19102-1921

and

DISCOVER FINANFCIAL SERVICES, LLC
c/o CT Corporation System
1515 Market Street
Philadelphia, PA 19102-1921

and

DISCOVER BANK
c/o CT Corporation System
1515 Market Street
Philadelphia, PA 19102-1921

Defendants

CIVIL ACTION

NO.

COMPLAINT

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (hereinafter “TCPA”).
2. The TCPA broadly prohibits any person from placing calls and text messages using an automated telephone dialing system or artificial or prerecorded voice to a cellular phone.
3. Defendant harassed Plaintiff with repeated autodialed collection calls to Plaintiff’s cell phone, in violation of the TCPA.

II. JURISDICTION AND VENUE

4. This Court has federal question subject matter jurisdiction over Plaintiff's TCPA and FDCPA claims pursuant to 28 U.S.C. § 1331; *Mims v. Arrow Fin. Ser., Inc.*, 132 S.Ct. 740 (2012).

5. Venue in this Court is proper in that Plaintiff resides here, the conduct complained of occurred here, and the Defendant transacts business here.

III. PARTIES

6. Plaintiff Sergey Kotsyuba is a consumer who resides in Feasterville, Bucks County, PA at the address captioned.

7. On information and belief, Plaintiff alleges that Discover Financial Services is, and at all times mentioned herein was, a Delaware corporation and the parent company of Defendants Discover Financial Services, LLC and Discover Bank, with a registered office address of CT Corporation Systems, 1515 Market Street, Philadelphia, PA 19102.

8. On information and belief, Plaintiff alleges that Discover Financial Services, LLC, is, and at all times mentioned herein was, a Delaware corporation, with a registered office address of CT Corporation Systems, 1515 Market Street, Philadelphia, PA 19102.

9. On information and belief, Plaintiff alleges that Discover Bank is, and all times mentioned herein was, a Delaware corporation, with a registered office address of CT Corporation Systems, 1515 Market Street, Philadelphia, PA 19102.

10. Defendants, Discover Financial Services, Discovery Financial Services, LLC and Discover Bank are collectively referred to herein as ("Discover" or "Defendants").

11. Discover at all relevant times was, a "person" as defined by 47 U.S.C. § 153(39).

IV. STATEMENT OF CLAIM

12. Plaintiff Sergey Kotsyuba has a cellular telephone number (ending in 8300) which he carries on his person and regularly uses.

13. At all relevant times, this phone number was assigned to a cellular telephone service Plaintiff used and paid for.

14. Beginning in or around 2007, Discover began placing calls to Plaintiff's cellular telephone number in the effort to collect an old credit card account.

15. Discover placed hundreds of calls to Plaintiff's cell phone beginning around 2007.

16. When answered, there would be a long pause or a recording, consistent with an automated telephone dialing system.

17. It is believed, and therefore averred, that the calls made by Discover to Plaintiff's cell phone were made using either an automatic telephone dialing system, as that term is defined in 47 U.S.C. § 227(a)(1), or an artificial or prerecorded voice.

18. Plaintiff did not provide his cell phone number to Defendants and Discover did not have the "prior express consent" that is required by the TCPA.

19. These telephone calls were not made for "emergency purposes," as defined by the Federal Communication Commission in 47 C.F.R. § 64.1200.

20. On June 26, 2007, the Federal Communications Commission ("FCC") issued a citation to Discover for violations of the TCPA, admonishing Discover that "[i]f after receipt of this citation, you or your company violate the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation." FCC Citation to Discover

Financial Services, Inc., June 26, 2007, available at

http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-288452A1.pdf

21. Notwithstanding its prior violations and the FCC's citation, Defendants continued to place prohibited calls to Plaintiff's cell phone without his prior express consent.

22. Defendant willfully placed these auto-dialed calls to Plaintiff without Plaintiff's consent.

COUNT I – TELEPHONE CONSUMER PROTECTION ACT

23. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

24. Defendant has violated the TCPA, 47 U.S.C. § 227 et seq., and its implementing Regulation at 47 C.F.R. § 64.1200 et seq., by making any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service. 47 U.S.C. § 227(b)(1)(A)(iii).

25. Plaintiff is entitled, under the TCPA, to statutory damages of not less than \$500.00 nor more than \$1,500.00 for each autodialed or artificial/pre-recorded telephone call to her cellular phone.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant Discover Financial Services, Discovery Financial Services, LLC and Discover Bank for the following:

- (a) Statutory damages for each call, pursuant to the TCPA;
- (b) A declaration that Defendant's calls violate the TCPA;
- (c) Such other and further relief as the Court shall deem just and proper.

V. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted:

Date: 3/7/14



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